

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D C 20460

Oct 9, 1986

Ms. Joan H. Peck, Chief
Waste Evaluation Unit
Hazardous Waste Division
State of Michigan Department of Natural Resources
Stevens T. Mason Building
Box 30028
Lansing, MI 48909

Dear Ms. Peck:

I am responding to your September 15, 1986 request for clarification on how 40 CFR 261.5(g)(3)(iv) applies to facilities that temporarily store hazardous wastes produced by generators of less than 100 kg/mo.

The condition under which the hazardous waste produced by these generators would be exempt from full regulation under 261.5(g)(3)(iv) is that the generator must either treat or dispose of his hazardous waste in an onsite facility or ensure delivery to an offsite storage, treatment or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. The purpose behind imposing this condition was to ensure that the facilities managing the waste are approved by the State to handle the particular waste. This would allow the States more flexibility in dealing with small quantity generators, since the State could deal directly with situations such as where it determines that certain types of waste should not be managed in a particular non-hazardous facility. See 45 Fed. Reg. 33104 (May 19, 1980).

The requirement that the facility be permitted, licensed or registered by a State was not intended to impose upon the States any particular procedure for approval of the facility. All that is required is that the State have some mechanism for approving facilities that propose to manage the exempt waste. Since the underlying intent of the requirement is that the State assess the risks associated with particular facilities handling the exempt waste, any mechanism that the State chooses to accomplish this is, in our view, acceptable under the regulations.

Thus, we would not judge an exchange of letters to be an inappropriate way to achieve "registration of a facility. */

If you have any further questions, feel free to contact me or Maureen Smith of my staff at (202)382-7703.

Sincerely,

Mark A. Greenwood
Assistant General Counsel
Solid Waste & Emergency Response Division

*/ The regulations do not define the term "registration".

September 15, 1986

Assistant General Counsel (LE-1325)
Environmental Protection Agency
401 M. St., S.W.
Washington D.C. 20460

Dear Mr. Greenwood:

We have been requested to clarify how 40 CFR 261.5 (g) (3) (iv) applies to facilities that temporarily store hazardous wastes produced by <100 kg/month generators. These facilities are not "transfer facilities" as defined in Part 260. According to 40 CFR Part 261.5(g)(3)(iv), a <100 kg per month generator is not subject to full regulation if the generator's wastes are treated, stored, or disposed at a facility that is "permitted, licensed or registered by a state to manage municipal or industrial solid waste."

Based on a recent discussion with Mr. Robert Axelrad, of the Office of Solid Waste, "registered" could be interpreted to mean a letter of notification to the State regulatory agency informing the agency that the facility is engaged in such an activity. Notification would identify to the state agency those facilities engaged in temporary storage activities.

Mr. Axelrad have, however, indicated that, to his knowledge, no legal interpretation or guidance has been issued on the meaning of "registration." We are, therefore, requesting that you provide a written response indicating EPA's interpretation of the definition of "registration."

Please contact me if there are any questions

Sincerely,

Joan K. Peck, Chief
Waste Evaluation Unit
Hazardous Waste Division
517-373-2730

cc: EPA Vile
Mr. Robert Axelrad
{HWD Supervisors